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NO. 85-977

In the Supreme Court of the United States

OCTOBER TERM, 1985

ALVIN C. COPELAND,

Petitioner

VS.

HEBERT RODRIGUE, BURTON G. KLEIN and MARY BORRELL

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

The Petition for a Writ of Certiorari was initially docketed with this Court on December 6, 1985. Alvin C. Copeland, Petitioner, respectfully submits this Supplemental Brief to inform this Honorable Court of a New Order which has been rendered by the Supreme Court of Louisiana on December 23, 1985, which restricts Petitioner's speech much more severely and onerously than the original Opinion and Decree (Original Petition, Appendix A, pp. A-1 to A-23; 475 So.2d 1071 (La. 1985)), rendered September 10, 1985.

ADDITIONAL OPINIONS BELOW

The Order of the Supreme Court of Louisiana rendered December 23, 1985, from which review is now sought

(Appendix L, infra, p. SA-1) it is not yet reported.

The Judgment rendered by the Twenty-Fourth Judicial District Court on December 14, 1985, in the case entitled "Herbert Rodrigue, et al," Civil Action Number 289-098 (Appendix M, infra, pp. SA-3 to SA-4; it is also not reported.

ADDITIONAL STATE STATUTES INVOLVED

No additional Constitutional provisions are involved herein. However, the Louisiana Supreme Court issued its December 23, 1985 Order pursuant to a Motion for Contempt of the Louisiana Supreme Court's September 10, 1985 Opinion and Decree. The following provisions of the Louisiana Statutes Annotated are involved:

1. **Revised Statutes, 13:4611:**

> "Except as otherwise provided by law:
>
> (A) the Supreme Court ... may punish a person adjudged guilty of a contempt of court therein, as follows: ...
>
> (2) For disobeying or resisting a lawful restraining order, or preliminary or permanent injunction, by a fine of not more than five hundred dollars, or by imprisonment for not more than six months or both."

2. **"Code of Civil Procedure Article 221.**

> "A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair

the dignity of the court or respect for its authority. ..."

3. **"Code of Civil Procedure Article 224.**

> " ... Any of the following acts constitutes a constructive contempt of court: ...
>
> "(2) Wilful disobedience of any lawful judgment, order, mandate, writ or process of the court. ..."

STATEMENT OF THE CASE SINCE PETITION FILED

On the same day that the Petition was filed in this Court, Petitioner, Alvin C. Copeland, erected and illuminated his 1985 Christmas display. In accordance with the Louisiana Supreme Court's September 10, 1985 Opinion (Appendix A, original Petition, p. A-1; 475 So.2d 1071), Petitioner removed all his secular decorations, and only religious symbols remained on Petitioner's property: a Star of Bethlehem, a nativity scene, religious tapestries and oversized lighted angels. See Transcript, December 13, 1985 Hearing (Contempt Hearing), pp. 5-12, 77-90. Apparently, however, bumper to bumper traffic continued.

One of the respondents herein, Burton G. Klein, thereupon filed a Motion for Contempt in the Louisiana Supreme Court. The Louisiana Supreme Court remanded the Motion to the 24th Judicial District Court, wherein Copeland was ordered to show cause why he should not be held in contempt of the Louisiana high court's September 10, 1985 Opinion and Decree. A hearing was held on December 13, 1985. Following this Hearing, the district court stated from the bench that "Mr. Copeland is in contempt of court, in that he did not substantially reduce the size of his display.

Now, I'm not convinced he did that in bad faith, however. ..." (Transcript, Contempt Hearing, p. 118).

The District Court went on to issue a Judgment, under date of December 19, 1985, effective December 13, 1985, condemning Copeland to a one-day imprisonment and a $500.00 fine for each day he remained in contempt, but allowing him to purge himself by removing from his premises those decorations on the western side of his property, and by eliminating the music. See Judgment, Appendix M, infra, pp. SA-3-4.)

Klein then applied successfully for Supervisory Writs directly to the Louisiana Supreme Court. The Louisiana Supreme Court upheld the lower court's holding of contempt, but prescribed a different remedy; rather than enforce its previous Opinion restricting Petitioner's speech, the court issued a new injunction prohibiting Petitioner's speech, on pain of imprisonment:

"O R D E R

> "The judgment of the district court finding defendant in contempt is affirmed; otherwise, the district court judgment is vacated. Finding defendant failed to comply with our order of September 10, 1985, we order defendant to discontinue immediately the display, both on his own lawn and wherever he has supplied exhibits or displays in his neighborhood. Defendant shall disconnect sound and light from the displays and dismantle or remove the displays from 5001 Folse Drive and those lawns which contain exhibits from defendant's property.
>
> "A warrant for defendant's immediate arrest is ordered, and defendant is remanded to the Jefferson Parish jail.

Defendant shall be imprisoned until he performs these acts, or until further orders of the Court.

> "This order will be followed in due course by an opinion of this court, which will also rule on the issue of punishment of defendant for past contempt of this court's order." Appendix L, infra, p. SA-1.

ADDITIONAL REASONS FOR GRANTING PETITION

A. This Order of the Louisiana Supreme Court even more clearly violates the guidelines set by this Court in Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) and others for restrictions of Petitioner's Free Speech.

The new order of the Louisiana Supreme Court conflicts with those guidelines laid down by this Court for limiting speech even more than the Louisiana Supreme Court's September 10, 1985 Opinion and Decree. The guidelines set forth on pp. 12-13 of the Petitioner's Petition apply equally herein. However, where the restrictions imposed earlier limited Petitioner's speech, the present Order entirely prohibits Petitioner's speech; he cannot have any Christmas decorations on his premises, and cannot loan decorations, or give them away, to others in his neighborhood.

Even more clearly than the Opinion before, this Order is not a "reasonable" time, place or manner restriction. Grayned v. City of Rockford, 408 U.S. 104, 115-17, 92 S.Ct. 2294, 2293-04, 33 L.Ed.2d 222 (1972). Even more clearly, this Order does not leave alternative forms for the expression of the protected speech. Heffron v. International Society for Krishna

Consciousness, 452 U.S. 640, 654, 101 S.Ct. 2559, 2567, 69 L.Ed.2d 298 (1981). Even more clearly, this Order cannot be said to be a precisely drawn means of serving a compelling state interest. Consolidated Edison Company v. Public Service Commission, 447 U.S. 530, 540, 100 S.Ct. 2326, 2335, 65 L.Ed.2d 319 (1980).

In fact, the Order issued by the Louisiana Supreme Court is the most egregious and most dangerous of all injunctions: it totally silences Petitioner, upon pain of imprisonment. This Court must act to prevent this most onerous of violations of Free Speech.

B. The Order of the Louisiana Supreme Court also Violates Petitioner's Rights to Equal Protection of the Law.

The Fourteenth Amendment to the United States Constitution provides for equal protection of the laws to all citizens of the United States:

> "No State shall ... deprive any person of ... property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The equal protection clause requires uniform application of a state's laws and equal and fair treatment for each citizen. As such, where an individual has been singled out over and above other individuals similarly situated in the application of a law, and that application involves a "fundamental right," such as speech, that individual's right to equal protection is violated. See Le Clair v. Saunders, 627 F.2d 606, 609 (2d Cir. 1980).

By virtue of the Louisiana Supreme Court's December 23, 1985 Order, Petitioner has become the only resident of Louisiana who cannot maintain Christmas decorations on his own property. He is also the only resident of Louisiana who cannot lend or give away Christmas

decorations to his neighbors. The Louisiana Nuisance Laws apply throughout the state, but only Petitioner is so prohibited under the Nuisance Laws. This arbitrary prohibition against only Petitioner's displaying Christmas decorations clearly deprives Petitioner of Equal Protection of the Laws.

C. The Order of the Louisiana Supreme Court raises an important Question of Due Process

In its Original Opinion and Decree, the Louisiana Supreme Court based its restrictions upon Petitioner's Christmas decorations on Louisiana Nuisance Laws. Moreover, it admitted that such restrictions had to be carefully drafted to avoid violating Petitioner's constitutional rights:

> "The restrictions imposed on defendant's display do not contravene his constitutional rights to express his beliefs. Our decree merely places reasonable limitations on the size of the display in order to prevent defendant's expression from infringing on the rights of plaintiff ...
>
> "In consideration of defendant's right of religious expression, he is free to retain the religious symbols which are included in his display, that is, the Star of Bethlehem, nativity scene, religious tapestry and oversized lighted angels ..." Appendix A, Petition, p. A-20; 475 So.2d at 1080.

Petitioner submits that despite the quoted language, the Opinion of September 10, 1985 violated Petitioner's Constitutional Rights. However, at least in that Opinion the Louisiana Supreme Court admitted that there were constitutional concerns involved. Now, in its latest Order, the Louisiana High Court has held that, in his 1985 Christmas display, Copeland was

in contempt of that court's September 10, 1985 Opinion in that he did not reduce the "size and extravagance" of his display enough. Under the alleged authority of a Motion for Contempt, the Louisiana Supreme Court thereupon issued an additional injunction, requiring Petitioner to dismantle all religious and non-religious elements in his display in direct contradiction to the language quoted above which allowed Copeland to retain religious symbols.

The Court also extended the injunction to the lawns of Copeland's neighbors, although in its original Opinion the "injunction granted herein is limited to activity at defendant's premises on Folse Drive." Appendix A, Petition, p. A-19; 475 So.2d at 1079.

A serious question of due process is raised herein. A suit is brought by a neighbor to enjoin a defendant from carrying out activities A, B, and C at his home. The Court, after notice, hearing and appeals, restricts the manner in which defendant carries out activities A and B, at his home, but specifically allows activity C to continue. Now the neighbor moves that defendant should be held in contempt for insufficient restrictions of A, B and C.

A hearing is held - solely with respect to whether the defendant complied with the original injunction.

Can a Court, following such a hearing, issue another injunction, enjoining activity C as well, and at other locations, solely because the defendant did not sufficiently restrict A and B?

Petitioner respectfully submits that the United States Constitution does not allow contempt laws to be so abused.

Also questionable is the immediate warrant for Petitioner's arrest, issued before Petitioner had any opportunity to cure the alleged contempt. And this Warrant remains extant; it has only been temporarily stayed by three of the Justices. Therefore, every Christmas season from now on, Petitioner will be faced with an outstanding arrest warrant.

Can this possibly be "due process of law?"

CONCLUSION

For the foregoing reasons, and as set forth previously, the Petition for Certiorari filed herein December 6, 1985, should be granted.

Respectfully submitted,

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BY: _____
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COUNSEL FOR PETITIONER,
ALVIN C. COPELAND

CERTIFICATE

I HEREBY CERTIFY that three copies of the foregoing Petition for Writ of Certiorari has been forwarded to counsel of record, Cecil M. Burglass, Jr., Esquire, by depositing same in the United States mail addressed to him at his office, this ____ day of January, 1986.

PETER J. BUTLER
COUNSEL FOR PETITIONER,
ALVIN C. COPELAND

SUPREME COURT OF LOUISIANA
New Orleans 70112

BURTON G. KLEIN
VERSUS
ALVIN G. COPELAND

NO. 85-CD-2370

IN RE: Burton G. Klein, applying for Writ of Certiorari and/or Review, and Supervisory Writs; Parish of Jefferson, 24th Judicial District Court, Division " ", No. 289-098

ORDER

The judgment of the district court finding defendant in contempt is affirmed; otherwise, the district court judgment is vacated. Finding defendant failed to comply with our order of September 10, 1985, we order defendant to discontinue immediately the display, both on his own lawn and wherever he has supplied exhibits or displays in his neighborhood. Defendant shall disconnect sound and light from the displays and dismantle or remove the displays from 5001 Folse Drive and those lawns which contain exhibits from defendant's property.

A warrant for defendant's immediate arrest is ordered, and defendant is remanded to the Jefferson Parish jail. Defendant shall be imprisoned until he performs these acts, or until further orders of the Court.

This order will be followed in due course by an opinion of this Court, which will also rule on the issue of punishment of defendant for past contempt of this Court's order.

For the Court, at New Orleans, Louisiana, this twenty-third day of December, 1985.

John A. Dixon, Jr.
Chief Justice for the Court

Watson, J. recused

SA-3

TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
STATE OF LOUISIANA

No. 289-098 DIVISION "K" DOCKET #

HERBERT RODRIGUE, BURTON G. KLEIN
and MARY BORRELL

VERSUS

ALVIN C. COPELAND and
POPEYES FAMOUS FRIED CHICKEN, INC.

FILED: _____ _____
Deputy Clerk

JUDGMENT

This matter come for hearing on plaintiff-mover Burton G. Klein's Motion for Contempt and for Damages this 13th day of December, 1985.

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after hearing the law and evidence in this matter,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Alvin C. Copeland is adjudged guilty of contempt of court and punished as follows:

(1) One-day imprisonment and a $500.00 fine for each day he remains in contempt of court.

(2) Copeland may purge himself of contempt by removing from his premises those features of his display which are located on the western side of his property and by eliminating the music accompanying his display until further orders of this Court.

The trial of damages suffered by plaintiff-mover Burton G. Klein is deferred by consent of this Court and the parties.

Defendant, Alvin C. Copeland, to pay all costs of these proceedings.

THIS JUDGMENT IS EFFECTIVE December 13, 1985.

GRETNA, LOUISIANA this 19 day of December, 1985.

/s/ Alvin Rudy Eason
JUDGE